

CALIFORNIA COASTAL COMMISSION

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W19a

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APPEAL SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal number **A-3-SCO-02-088, RMC Production Increase**

Applicant RMC Pacific Materials

Appellants Sierra Club, Coastal Advocates for Small Towns (COAST), & David Kossack

Local government Santa Cruz County

Local decision Approved with Conditions (October 8, 2002)

Project location RMC Pacific Materials cement plant in the town of Davenport on Santa Cruz County's north coast.

Project description Increase allowable cement plant production capacity from 875,000 tons annually to 980,000 tons annually.

File documents Santa Cruz County Certified Local Coastal Program (LCP); Santa Cruz County CDP Application File 02-0159; Monterey Bay ReCAP.

Staff recommendation ... **Substantial Issue Exists; Denial**

Summary of staff recommendation: Santa Cruz County approved a proposal to allow an increase in the annual production limit for the Applicant's Davenport cement plant from 875,000 tons of cement to 980,000 tons of cement per year. Among other things, the County's approval was conditioned for the Applicant to submit an application for a complete review of the cement plant operation to assess overall impacts and evaluate possible project modifications and/or mitigations to address them. The complete review was a condition of the base coastal permit's original approval and was to have occurred by 1995, but has not yet taken place. The three Appellants generally allege that the approval is inconsistent with the LCP because the County did not have adequate information regarding expected impacts of the project, and that because of this, there may be negative impacts to coastal resources (including, but not limited to, habitat for listed species in San Vicente Creek, water quality, water supply, public access and recreation in the Highway One corridor, and cumulative impacts to each).

The County found that the proposed increase would not increase the intensity of use of the site, and that it would not result in an increase in water or air quality impacts. This finding was based on the Applicant's statement that the production increase was possible without any associated impacts because of increased production efficiencies.



California Coastal Commission

January 2003 Meeting in Los Angeles

Staff: D.Carl Approved by:

A-3-SCO-02-088 RMC Pacific strpt 1.8.2003.doc

Other than the Applicant's assertions, the County application file doesn't include any evidence evaluating potential project impacts applicable to the proposed production increase. The County exempted the project from CEQA, and the file does not otherwise include analysis of the effect of the project on coastal resources. Staff is particularly concerned about the potential effect of the project on San Vicente Creek because this creek provides habitat for State and Federally listed species such as Coho and Steelhead, and the effect of the Applicant's existing Creek withdrawals on these species is already not well understood. NMFS and CDFG have indicated that significant caution is warranted when dealing with San Vicente Creek water withdrawals. In past Davenport projects, the Commission has exercised great care with projects involving San Vicente Creek.

Staff believes that the County's approval of a production increase was premature because there wasn't adequate analysis of potential project impacts on coastal resources, and the coastal permit required re-review intended to provide this type of information and analysis was not done. The Applicant is out of compliance with their base coastal permit, and production increases that are not supported by thorough and complete analysis of potential impacts should not be approved. While it is acknowledged that the County conditioned the current production increase approval for the required re-review to take place, such sequencing is backwards inasmuch as the re-review information is the type of in-depth analysis of project impacts that is necessary to be able to make the current production limit increase decision, and it was already required in the base coastal permit.

Staff recommends that the Commission find that a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program (LCP) and take jurisdiction over the coastal development permit for the project. Staff further recommends that because the application does not include adequate information to make a decision in this matter, that the Commission deny the application.

The Applicant should be encouraged to comply with the base coastal permit approval and submit to the County the information required for a thorough evaluation of ongoing operational impacts and associated mitigation measures to assure that coastal resources are not being adversely affected. It would be during the course of this re-review that it would be appropriate for the Applicant to identify changes to the base coastal permit that they would like to pursue (such as the production increase). Any such changes would likewise need to be evaluated for their impacts to coastal resources. Modifications to the base permit outside of this context are not appropriate.

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1. Appeal of Santa Cruz County Decision

A. Santa Cruz County Action

The application was approved by the Santa Cruz County Zoning Administrator on August 16, 2002. Following Zoning Administrator approval, and because of many of the same issues raised by the Appellants in this appeal, the application was elevated to the Board of Supervisors (by the Supervisor for the district that includes Davenport) for them to make the coastal permit decision in this matter. On October 8, 2002, the Board approved the project, slightly modifying the Zoning Administrator's conditions. Notice of the Board's action on the coastal permit was received in the Commission's Central Coast District Office on October 21, 2002. The Commission's ten-working day appeal period for this action began on October 22, 2002 and concluded at 5pm on November 4, 2002. Three valid appeals (see below) were received during the appeal period.



B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. The base permit, which this application amends, was appealable because it required a public hearing above the County's identified level 4 hearing procedures (thus making it a conditional as opposed to a principally permitted use here). The current action was identified as appealable by the County in part because of the same reason, and in part because the base permit that it amends was appealable.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not so located and thus this additional finding would not need to be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

C. Appellants' Contentions

The three Appellants (the Sierra Club, Coastal Advocates for Small Towns (or COAST), and David Kossack) generally allege that the County's approval is inconsistent with the LCP because the County did not have adequate information regarding expected impacts of the project, and that because of this, there may be negative impacts to coastal resources (including, but not limited to, habitat for listed species in San Vicente Creek, water quality, water supply, public access and recreation in the Highway One corridor, air quality, and cumulative impacts to each). Please see exhibits D, E, and F for the Appellants' complete appeal documents.



2. Procedural History (Post-County Action)

On December 12, 2002, the Commission opened and continued the substantial issue hearing on the appeal because Commission staff had not received the complete administrative record on the project from the County in time to prepare a staff report with a full analysis and recommendation for the Commission's December 2002 meeting. The County's administrative record on the application was subsequently received in the Commission's Central Coast District Office on December 2, 2002 (i.e., the week before the Commission's December meeting).

3. Staff Recommendation

A. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. *I move that the Commission determine that Appeal Number A-3-SCO-02-088 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.*

Staff Recommendation of Substantial Issue. *Staff recommends a **no** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.*

Resolution To Find Substantial Issue. *The Commission hereby finds that Appeal Number A-3-SCO-02-088 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program.*

B. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development.

Motion. *I move that the Commission approve Coastal Development Permit Number A-3-SCO-02-088 pursuant to the staff recommendation.*

Staff Recommendation of Denial. *Staff recommends a **no** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*



***Resolution To Deny The Permit.** The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the Santa Cruz County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

Recommended Findings and Declarations

The Commission finds and declares as follows:

4. Project Description

A. Project Location

The cement plant is located in the unincorporated town of Davenport, approximately ten miles north of the City of Santa Cruz. The cement plant site is located along the inland Highway One frontage just upcoast of the main commercial area of town. Davenport is a small coastal town in Santa Cruz County's North Coast planning area and is the only concentrated development area along Highway One between Santa Cruz and Half Moon Bay. This larger stretch of California's coastline is characterized by lush agricultural fields and extensive State Park and other undeveloped public land holdings. Davenport provides a convenient stopping place and a visitor destination for travelers along this mostly undeveloped coastline.

The overall cement plant operation includes significant quarrying and associated delivery apparatus stretching miles inland from the actual cement plant proper; including water diversion facilities to, from, and in San Vicente and Mill Creeks.

See exhibit A for location maps.

B. County Approved Project

The County approved project amends the base coastal permit (County coastal permit 88-0188) to allow a permanent increase in the annual production limit for the Applicant's Davenport cement plant from 875,000 tons of cement to 980,000 tons of cement. See exhibit B for the Applicant's application request and justification for it, and exhibit C for the adopted County staff report, coastal permit findings and conditions approving the Applicant's proposed project.



5. Substantial Issue Findings

A. Applicable Policies

The Appellants' LCP allegations generally focus on the project's potential to adversely impact coastal resources due to water withdrawals (and their effect on habitat and water supply), wastewater discharge, increased traffic in the Highway One corridor, and cumulative impacts when each of these issues are considered together and when combined with the impacts of reasonably foreseeable projects.¹

There are a sizeable number of LCP policies that apply to the proposed project. Part of the reason for this is because the range of coastal resources potentially involved (i.e., ESHA, public access and recreation, water quality, water supply, viewshed/character, etc.), and part of the reason is because of the way the certified LCP is constructed where there are a significant number of policies within each identified issue area, and then other policies in different LCP issue areas that also involve other issue areas (e.g., habitat policies that include water quality requirements, and vis versa). In addition, there are a number of Davenport specific policies because the town is an LCP-designated Coastal Special Community. In terms of habitat resources, there are also two zoning chapters that include requirements for protecting streams, riparian corridors, and ESHA.

Because the project impacts (and the associated applicability of particular policies) are unclear from the application file, and for brevity's sake in these findings, applicable policies are shown in exhibit G. There may be more applicable policies, depending on the nature of the as yet unidentified impacts of the project. At any rate, and in general, the LCP protects ESHA (like San Vicente Creek), water supply streams (like San Vicente, Mill, and Liddell Creeks), water quality, public access and recreation capacity of Highway One, and the character of the town of Davenport from adverse impacts.

B. Analysis of Consistency with Applicable Policies

Stream Resources

ESHA and Sensitive Habitat (including, per the LCP definition, San Vicente, Mill, and Liddell Creeks) are to be preserved, restored, protected against significant disruptions, and any development authorized in or adjacent to them must maintain or enhance the habitat (LCP Objectives and Policies 5.1 et seq and 5.2 et seq, IP Chapters 16.30 and 16.32). Water quality is required to be protected and improved (LCP Objectives and Policies 5.4 et seq, 5.7 et seq, and 7.23 et seq, and LCP Policies 2.23 et seq). The LCP

¹ The Appellants also allege that there are CEQA inconsistencies with the project and that air emissions weren't evaluated thoroughly. However, CEQA inconsistency of itself is not an LCP issue per se. Rather, the impacts that are typically considered under CEQA, and that the Appellants' allege weren't evaluated here, represent the LCP issues engendered by the appeals. Likewise, although air quality and emissions are clearly a General Plan issue, air quality impacts are not categorically an LCP issue per se. In other words, there are not specific air quality LCP provisions akin to the water quality provisions of the LCP. Protection of air quality in an LCP context broadly revolves around preserving the overall integrity of the coastal zone, and its recreational, habitat, and other resource features. In that broad context, many, if not most, of the LCP policies enumerated above could be read to protect air quality. In addition, in Davenport, the LCP designates Davenport as a Coastal Special Community whose character is to be preserved and enhanced (LCP Objective and Policies 8.8 et seq and IP Section 13.20.143 et seq); preservation of air quality is thus inherent in these policies as well.



requires a biotic assessment, and potentially a full biotic report, for development within sensitive habitats (LCP Policy 5.1.9 and IP Section 16.32.070), and requires environmental review for all development proposed that affect riparian corridors, and preparation of an EIR or a full biotic report for projects which may have a significant effect on these resources (LCP Policy 5.2.8 and IP Section 16.32.070). The LCP requires adequate stream flows to protect anadromous fish runs, including restoration of same if in-stream flows are inadequate for fisheries, designates San Vicente Creek, Mill Creek, and Liddell Creek as Critical Water Supply Streams that are currently being used at full capacity, and prohibits additional withdrawals of water from designated Critical Water Supply Streams (LCP Objective and Policies 5.6 et seq). The LCP requires that development be evaluated for its potential to impact water supply systems (LCP Policy 7.18.3).

The Appellants allege that the County's approval did not include adequate information to understand the effect of the proposed production increase on stream water supply and habitat resources, and particularly San Vicente Creek. The Appellants further allege that the approved project will result in additional water withdrawals from San Vicente Creek to the detriment of habitat and water supply.

The County's application file does not include any analysis of the impacts to Creek resources of existing water withdrawals by the Applicant, and does not contain any information as to how much additional water withdrawal would be necessary to allow for the production increase. Rather, the County's action in this matter appears to have been based on the Applicant's conclusion that increased plant efficiencies allow for additional production without any "water quality impacts."² However, the Applicant's conclusion does not specifically identify how 'increased efficiencies' accomplish this effect. The County findings repeat the language of the Applicant's submittal.³ The County's findings also repeat the language of past actions by the County to allow temporary increases applicable to single years only; in fact, the staff report texts are essentially identical.⁴ Absent information to the contrary in the application file, the Appellants' presumption that additional production would require additional water is a valid hypothesis.

From what the Commission understands,⁵ the Applicant withdraws water directly from both San Vicente Creek and Mill Creek. The diverted water is used in the Applicant's cement manufacturing processes, and for water supply to the town of Davenport (through the Davenport Water and Sanitation District (DWSD) which is managed by the Santa Cruz County Public Works Department). The Commission is also aware⁶ that the State Water Resources Control Board recently completed an investigation of the Applicant's right to withdraw water from San Vicente and Mill Creeks that concluded, among other

² Since the County file and the Applicants conclusions are otherwise silent on water supply and habitat impacts, it is presumed for the purpose of these findings that the phrase "water quality impacts" is meant to encompass these related water issues. If it does not encompass these issues, then the County's file is silent on these habitat and water supply issues.

³ See exhibit B for the Applicant's request for expanded limits.

⁴ Temporary production increases (limited to single year production targets in each case) were approved by the County for calendar years 1987, 1988, 1997, 1999, 2000, and 2001.

⁵ Not from the County file in this matter because the file did not include such information.

⁶ Ibid.



things, that the Applicant does not have a riparian right and appears to have only a partial appropriative water right (pre-1914) to divert water from the two creeks, that the Applicant appears to have diverted water in excess of the pre-1914 right, and that approximately 30% of the water diverted was spilled and not used for a beneficial use.⁷

At a minimum, San Vicente Creek is known habitat for State and Federally listed coho salmon, steelhead salmon, and red-legged frog,⁸ and the California Fish and Game Commission has designated San Vicente Creek as an endangered coho salmon spawning stream. NMFS indicates that San Vicente Creek is the southern-most creek where coho salmon is still extant in its entire North American range, and that protection of this creek is therefore of significant importance. CDFG echoes NMFS concerns in this regard, and have asked that the County not approve additional development without an understanding of such development's potential impact to in-stream flows of San Vicente Creek.

It is not clear from the County file whether existing water withdrawals are leading to listed species habitat degradation, nor is it clear whether the production increase would exacerbate any such impacts or cause impacts of its own. In fact, the Commission is not aware of any comprehensive evaluations, whether in this project context or otherwise, of habitat impacts due to the Applicant's water diversion activities on the San Vicente Creek.⁹ Without such information, and because of the sensitivity of the habitat present in the San Vicente Creek, the Commission believes the most conservative (and most protective of habitat) approach is warranted. There needs to be a clear understanding that a project will not impact San Vicente Creek habitat resources before it can be considered. Note, for example, that on the Trust for Public Land's (TPL's) Coast Dairies property that surrounds Davenport, and that includes in part San Vicente Creek, NMFS and CDFG this year have gone as far as to inform TPL that all agricultural diversions should stop immediately due to their harm to fisheries resources (see exhibit A for a map showing Coast Dairies in relation to Davenport).

In terms of public water supply issues, the County approval does not include an analysis of potential impacts to water supply systems, including the creeks that supply the water and the associated larger surrounding watershed and recharge areas associated with the creeks (e.g., the City of Santa Cruz's system that draws water from Liddell Creek, and Davenport's DWSD system that draws water from San Vicente Creek). Again, it is unclear what effect the project may have on water supply since no information or analysis is presented. The Commission has been asked by the City of Santa Cruz Water Department to deny the current production increase due to its potential effect on public water supply (see exhibit H).

⁷ State Water Resources Control Board, December 27, 2001.

⁸ Coho are State-listed as an endangered species and Federally listed as a threatened species, steelhead are Federally listed as a threatened species, and red-legged frog are Federally listed as a threatened species and State listed as a special concern species.

⁹ Note that the State Board Investigation from December 2001 did not include such an evaluation, noting that such an evaluation was beyond the scope of that investigation due to limited State Board resources available to develop the required body of evidence. The State Board investigation did indicate, however, that if valuable public trust resources exist in a stream, if these resources are being adversely affected by diversions, and if modification to diversions would help alleviate such impacts (all of which may be the case for San Vicente Creek), then the Board can step in to reallocate water for beneficial uses.



In sum, the Applicant and the County conclude that there wouldn't be any water quality impacts, but this conclusion is not supported by any analysis regarding the effect of existing withdrawals and whether the production increase would lead to additional withdrawals. The application does not include a biotic assessment, biotic report, or CEQA analysis as would be required by the LCP for development including withdrawal of water from the subject creeks, and does not include any information regarding the project's effect on in-stream flows, fisheries, ESHA, Critical Water Supply Streams, and water supply systems. As a result, consistency with core LCP policies cannot be confirmed in this case.

Thus, a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP.

Wastewater Generation

The LCP protects coastal water quality (LCP Objectives and Policies 5.4 et seq, 5.7 et seq, and 7.23 et seq, and LCP Policies 2.23 et seq). The Appellants allege that the County's approval did not include adequate information to understand the effect of the proposed production increase on coastal water quality due to wastewater discharges. Similar to water withdrawals, the Appellants' presumption is that additional production would result in additional wastewater discharge.

The County's file does not include any information regarding the Applicant's existing wastewater discharges, where and how they are directed, nor any information regarding additional discharges that may be attributable to the production increase. As with the stream and water discussion above, and in the same manner, the Applicant and the County conclude that there wouldn't be any water quality impacts. However, and again in the same manner, it is not clear from the County file whether the Applicant's existing wastewater generation is leading to resource degradation, nor is it clear whether the production increase would exacerbate any such impacts or cause impacts of its own.

The Commission is aware¹⁰ generally that there have been DWSD wastewater capacity problems in Davenport in previous years (due to old collection lines into which excess water infiltrates) that have led to raw wastewater discharges into the Pacific Ocean. Because of this, any increase in flows into the system should be considered significant until the system is upgraded. However, there is no information in the file to be able to understand the water quality of existing wastewater discharge, whether this discharge is into the wastewater delivery system or somewhere else, and the effect of the production increase on wastewater generation and offsite impacts. As a result, consistency with core LCP policies cannot be confirmed in this case.

Thus, a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP.

Highway One Visitor Access

Santa Cruz County's north coast area is a stretch of mostly undeveloped Central Coast that represents the

¹⁰ Not from the County file in this matter because the file did not include such information.



grandeur of a bygone (in many places) agrarian setting and coastal wilderness California that attracts visitors to it. Davenport itself is an important visitor destination; its proximity to Santa Cruz heightening its appeal in this regard. Highway One is the primary (and in some places only) means of travel on the north coast, and is thus widely used by visitors and those otherwise seeking to enjoy the region's coastal resources.

The LCP contains a series of interwoven policies which, when taken together, reinforce and reflect the Coastal Act mandate to maximize public access and recreational opportunities, protect existing public access and encourage public access and recreational enhancements (such as public parking, trails, and other facilities) to increase enjoyment of coastal resources and to improve access within the coastal region (LCP Chapters 3 and 7). The LCP also targets Davenport for specific enhancements, such as clear parking and circulation (including IP Section 13.20.143 et seq). The LCP establishes a priority of uses within the coastal zone where recreational uses and facilities are a higher priority than residential uses, and the LCP prohibits the conversion of a higher priority use to a lower priority use (LCP Policy 2.22 et seq); in road improvement projects, priority is given to providing recreational access (LCP Policy 3.14 et seq). Existing public access use is protected (LCP policy 7.7.10).

The Appellants allege that the County's approval will lead to additional truck traffic in the Highway One corridor that will adversely affect public visitor access along Highway One, and particularly within Davenport itself.

The County approval would mean that additional cement would be produced annually. This additional cement would need to be transported off site. The Applicant indicates that this would be accomplished by additional truck traffic on Highway One, and by rail (at least 15% by volume via rail as conditioned by the base coastal permit). The County conditioned the approved project to transport any additional cement by rail if possible, and allowed truck traffic on Highway One during non-peak hours.

The Applicant relies on a 1989 traffic report to conclude that the additional traffic due to the production increase would be insignificant, and the County concurs in their approval. However, reliance on a traffic study from over a decade ago is inappropriate given the amount of regional growth, change to the transportation infrastructure, and increased demand by coastal visitors in that time frame. This is particularly the case within Davenport proper where a burgeoning visitor trade is flourishing in recent years and through circulation (and parking) along the town's Highway One frontage can be difficult as a result. Moreover, and as alleged by the Appellants, it is not clear that there any longer is a 'non-peak' traffic time through the City of Santa Cruz on Highway One.

The County's file does not contain clear information regarding whether the Applicant's existing traffic generation is leading to adverse impacts to coastal visitors in the Highway One corridor, particularly within Davenport proper, and whether the production increase would exacerbate any such impacts or cause impacts of its own. Absent clear and current information on the effect of the proposed production increase on current Highway One usage and visitor traffic needs, consistency with LCP access and recreation policies cannot be confirmed in this case.



Thus, a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP.

Cumulative Impacts

The LCP requires that development not adversely affect, individually or cumulatively, coastal resources (LCP Policy 2.1.4), including the coastal resources thus far discussed in these findings.

The Appellants allege that there are a series of projects contemplated by the Applicant in the foreseeable future, and a number of commercial projects either permitted or pending in Davenport, that could lead to impacts that cumulatively are greater than those potentially associated with the current proposal to increase annual production limits alone.

The County's file does not include information regarding the Applicant's future projects, and does not include information on projects otherwise permitted or pending in Davenport. The Commission is aware¹¹ that the Applicant is pursuing an expansion of their mining operation (and that an application and EIR is pending at the County level), and that the Applicant is also pursuing several cement production related projects; there are also two recently permitted major commercial projects along Davenport's Highway One frontage (i.e., the conversion of the former Odwalla building and the rebuilding of Forrester's Hall) and one recently approved by the County that has been appealed to the Commission (i.e., the demolition of the Davenport Barn and construction of a replacement structure). All of these projects are either under construction (i.e., Odwalla) or could be in the reasonably foreseeable future. It is reasonable to assume that their combined effect on coastal resources when considered along with the of the project under appeal here, particularly the combined effect of those projects currently being pursued by the Applicant, could lead to cumulative impacts to the types of coastal resources detailed above.

Again, the County's approval does not describe these reasonably foreseeable projects, and does not include any analysis of the potential for cumulative adverse impacts to coastal resources when their impacts are combined with the impacts of the current project. All of the above potential impacts, which themselves are not clearly understood in relation to the current project, could be cumulatively worse, but there is no information or analysis in the file to evaluate whether this is the case. As a result, consistency with applicable LCP and policies cannot be confirmed in this case.

Thus, a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP.

Non-Compliance with Base CDP

The base CDP (County coastal permit 88-0188) requires the Applicant to submit an application for a complete review of the cement plant operation to assess overall impacts and evaluate possible project modifications and/or mitigations to address them. The complete review was a condition of the base

¹¹ Again, not from the County file in this matter but from other sources.



permit's original approval and was to have occurred by 1995, but has not yet taken place. As a result, the Applicant is out of compliance with the base permit.

The re-review condition was a fundamental tool used in the base coastal permit to evaluate its effectiveness at protecting coastal resources. As such, it was an integral part of the reason the base permit was found by the County to be consistent with the LCP. Lacking the required re-review analysis and information, it is not clear that the existing operation is consistent with LCP requirements, let alone the proposal to allow more production when associated impacts are not well understood. As a result, consistency with core LCP policies cannot be confirmed in this case.

Thus, a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP.

C. Substantial Issue Conclusion

The three Appellants generally allege that the approval is inconsistent with the LCP because the County did not have adequate information regarding expected impacts of the project, partially because the base CDP-required review never occurred, and that because of this, there may be negative impacts to coastal resources due to water withdrawals (and their effect on habitat and water supply), wastewater discharge, increased traffic in the Highway One corridor, and cumulative impacts when each of these issues are considered together and when combined with the impacts of reasonably foreseeable projects

The County found that the proposed increase would not increase the intensity of use of the site, and that it would not result in an increase in water or air quality impacts. This finding was based on the Applicant's conclusion that the production increase was possible without any associated impacts because of increased production efficiencies.

It is not clear from the very limited information in the County file that the production limit increase is as innocuous as the Applicant states. Other than the Applicant's assertions, the County application file does not include evidence evaluating potential project impacts applicable to the proposed production increase. The County exempted the project from CEQA, and the file does not include an analysis of the effect of the project on coastal resources. The lack of impact assessment raises issues relevant to San Vicente Creek particularly because the Applicant diverts water from the Creek for industrial production and this creek provides habitat for State and Federally listed species such as Coho and Steelhead. The effect of existing water withdrawals on habitat is not well understood; partially because of this NMFS and CDFG have indicated that extreme caution is warranted when dealing with San Vicente Creek resources, and particularly when dealing with water withdrawals. Per the LCP, additional withdrawals from San Vicente Creek are prohibited and in-stream flows are to be restored to protect habitat there. In past Davenport projects, the Commission has exercised great care with projects involving San Vicente Creek.

The lack of impact assessment also raises issues regarding the potential for the project to negatively impact public water supplies (including those of the City of Santa Cruz and Davenport), off-site water quality due to industrial discharges, and recreational access within the Highway One corridor. In



addition, the lack of cumulative impact assessment, particularly the cumulative impact of this project in relation to others being pursued by the Applicant at their industrial facility, raises issues in each of the issues areas discussed.

Absent thorough project impact assessment as required by the LCP, consistency with core LCP policies cannot be confirmed in this case. As a result, the Commission finds that a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program and takes jurisdiction over the coastal development permit for this project.

6. Coastal Development Permit Findings

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP for the proposed project. The standard of review for this CDP determination is the County LCP.

A. Analysis of Consistency with Applicable Policies

The substantial issue findings above are incorporated directly herein by reference.

The County's approval of a production increase was premature without adequate analysis of potential project impacts on coastal resources, and was premature without the coastal permit required re-review intended to provide this type of information and analysis from which to make informed coastal permit decisions. The Applicant is out of compliance with their base coastal permit, and production increases that are not supported by thorough and complete analysis of potential impacts should not be approved. While it is acknowledged that the County conditioned their production increase approval for the required re-review to take place, such sequencing is backwards inasmuch as the re-review information is the type of in-depth analysis of project impacts that is necessary to be able to make the current production limit increase decision.

An option that is often considered when the Commission takes jurisdiction over a coastal permit and additional information is necessary for de novo review is to have Applicants submit the requisite information and/or analyses prior to that de novo review. In this case, however, such an option does not make common sense. The base coastal permit, with which the Applicant is out of compliance, is a County coastal permit. The required re-review is a County coastal permit condition. The Applicant is currently preparing information for the overdue and required re-review and the County expects that it will be submitted in short measure. The appropriate vehicle to propose and evaluate production increases is within the comprehensive re-review of the cement plant operation that is upcoming, and not a separate stand alone component heard by the Commission outside of that context. Modifications to the base permit outside of the required re-review context (or where such re-review does not occur at all) are not appropriate.

Therefore, because the current application does not include adequate information from which to make



informed coastal permit decisions in this matter, at least partly because the Applicant is out of compliance with their base coastal permit, the Commission finds that the proposed project is inconsistent with the certified LCP and denies the current production increase application. Such denial is without prejudice to the Applicant's upcoming re-review inasmuch as it is based on the lack of information in the current application. In the re-review context, the Commission expects that the Applicant will comply with the base coastal permit approval and submit to the County the information required for a thorough evaluation of ongoing operational impacts and associated mitigation measures to assure that coastal resources are not being adversely affected. The Commission expects that the issues raised in these findings, particularly the lack of comprehensive information on water withdrawals and their effect on habitat resources, will be addressed in the County re-review context. It would be during the course of this re-review that it would be appropriate for the Applicant to identify changes to the base coastal permit that it would like to pursue (such as the production increase). Any such changes would likewise need to be thoroughly evaluated for their impacts to coastal resources.

B. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County, acting as the lead CEQA agency, exempted the project from CEQA review.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above substantial issue and coastal development permit findings are incorporated herein in their entirety by reference. As detailed in the findings above, there appear to be less environmentally damaging feasible alternatives to the proposed project (including the no project alternative), and there appear to be additional coastal resource impacts that weren't identified (and thus weren't mitigated) associated with the proposed project. Because the requisite project impact assessment is missing, and to err on the side of resource protection when impacts are not well understood, the Commission finds that there are additional feasible alternatives and feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project would have on the environment within the meaning of CEQA. Thus, the proposed project will result in significant environmental effects for which feasible mitigation measures have not been employed inconsistent with CEQA Section 21080.5(d)(2)(A). Therefore, the project is not approvable under CEQA and is denied.

